

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

THOMAS POWELL

PLAINTIFF

VS.

CIVIL ACTION NO. 3:14-cv-840-WHB-JCG

CITY OF JACKSON, et al.

DEFENDANTS

OPINION AND ORDER

This cause is before the Court on the Report and Recommendation ("R and R") of United States Magistrate Judge John C. Gargiulo. After considering the R and R¹ and the other pleadings in this case, the Court finds it should be adopted in its entirety.

I. Discussion

Thomas Powell ("Powell") alleges that the City of Jackson, Mississippi, and several employees of the Jackson Police Department violated his constitutional rights. Based on the alleged violations, Powell filed a lawsuit in this Court on October 29, 2014, seeking damages under 42 U.S.C. § 1983. Summons for the named defendants were issued by the Clerk of Court in December of 2014. See [Docket Nos. 2 and 3]. In March of 2015, Powell was granted additional time, i.e. up to and including April 3, 2015, in which to serve process. See Text Order entered on March 4, 2015.

¹ Plaintiff was required to file an objection to the R and R on or before August 31, 2015. No objection was filed.

Executed Summons were not returned or filed with the Clerk of Court.

On August 3, 2015, United States Magistrate Judge John C. Gargiulo entered an Order requiring Powell to show cause, on or before August 13, 2015, as to the reason the case should not be dismissed based on his failure to timely serve process as required by Rule 4(m) of the Federal Rules of Civil Procedure. See Show Cause Order [Docket No. 5]. By that Order, Powell was expressly warned: "If such good cause is not shown, or if no response is received within such time, this case may be dismissed without prejudice and without further notice to Plaintiff." Id. at 2. Powell did not respond to the Show Cause Order. Based on Powell's failure to timely serve process and his failure to respond to the Show Cause Order, Judge Gargiulo entered the R and R that is presently before the Court. In his R and R, Judge Gargiulo recommends that this case be dismissed pursuant to Rule 4(m), which provides, in relevant part:

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

After reviewing the R and R, to which no objection has been filed, as well as the Docket in this case, the Court agrees with Judge Gargiulo that the case should be dismissed based on Powell's

failure to serve process within the time period prescribed by Rule 4(m), and the lack of any showing of good cause for that failure. Accordingly, the Court will adopt Judge Gargiulo's R and R recommending the dismissal of this case.

For the foregoing reasons:

IT IS THEREFORE ORDERED that the August 14, 2015, Report and Recommendation of United States Magistrate Judge John C. Gargiulo [Docket No. 6], is hereby adopted as the ruling of this Court.

A Order of Dismissal, dismissing this case without prejudice, shall be entered this day.

SO ORDERED this the 16th day of September, 2015.

s/ William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE